

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

|                                  |   |                      |
|----------------------------------|---|----------------------|
| In the Matter of                 | ) |                      |
|                                  | ) |                      |
| Implementation of the            | ) | CC Docket No. 96-115 |
| Telecommunications Act of 1996:  | ) |                      |
|                                  | ) |                      |
| Telecommunications Carriers' Use | ) |                      |
| of Customer Proprietary Network  | ) |                      |
| Information and Other            | ) |                      |
| Customer Information             | ) |                      |

**PETITION FOR RECONSIDERATION OF SBC COMMUNICATIONS INC.**

SBC Communications Inc. ("SBC"), on behalf of itself and its affiliates, hereby files this Petition for Reconsideration ("PFR") of the Commission's CPNI Order<sup>1</sup> interpreting and implementing Section 222 of the Telecommunications Act of 1996 ("Act"). SBC requests that the Commission reconsider its CPNI Order in two limited respects, and conclude that (1) the offering, installation, maintenance and repair of customer premises equipment ("CPE"), and the provision of enhanced/information services are "services necessary to, or used in, the provision of such telecommunications service" within Section 222(c)(1)(B) of the Act;<sup>2</sup> and (2) the use of CPNI for the purpose of engaging in "winback" discussions is appropriate and permitted by

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<sup>1</sup>Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Second Report and Order, released February 26, 1998 ("CPNI Order").

<sup>2</sup>For purposes of this PFR, the CPE-related relief is limited to CPE offered to the public by SBC, but manufactured and supplied solely by unaffiliated entities, for whom SBC essentially functions as a distribution channel for CPE they directly provide to the public. The enhanced/information services-related relief sought encompasses SBC's direct provision of these services to the public, including SBC's offering, installation, maintenances and repair of such services.

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Section 222(c)(1) of the Act. This PFR does not take into account the Order released in this proceeding on May 21, 1998; that Order is still under review and will be referenced as appropriate in the comment cycle established regarding SBC's and others' PFRs.

**I. SECTION 222(c)(1)(B) SHOULD ENCOMPASS THE OFFERING, INSTALLATION, MAINTENANCE AND REPAIR OF CPE AND THE PROVISION OF ENHANCED/INFORMATION SERVICES.**

Section 222(c)(1)(B) of the Act excuses any customer approval requirement where a carrier uses CPNI for "services necessary to, or used in, the provision of such telecommunications service" (i.e. the telecommunications service from which the CPNI is derived). The Commission construed this section, like Section 222(c)(1)(A), "to reflect the understanding that, through subscription to service, a customer impliedly approves its carrier's use of CPNI for purposes within the scope of the service relationship."<sup>3</sup> Further, the Commission interpreted Section 222(c)(1)(B) as recognizing that customers impliedly approve their carrier's use of CPNI in connection with certain *non*-telecommunications services.<sup>4</sup>

However, the Commission declined to include the provision of CPE and enhanced/information services within the scope of the customer-carrier total service relationship, thus erecting a customer approval requirement in these circumstances.<sup>5</sup> SBC submits that

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<sup>3</sup>CPNI Order, ¶70.

<sup>4</sup>Id.

<sup>5</sup>FCC Rule 64.2005(b)(1).

resulting Rule 64.2005(b)(1)<sup>6</sup> neither reflects an appropriate view of the customer-carrier total service relationship nor a proper construction of Section 222(c)(1)(B).

As SBC and others have demonstrated, it is inappropriate to apply Rule 64.2005(b)(1) to either wireless or wireline telecommunications carriers.<sup>7</sup> The rule directly conflicts with wireless technology and Commission policy, long-established marketing practices of wireless carriers, and the expectations of wireless consumers.<sup>8</sup> Many of the same considerations apply to the wireline context, with respect to CPE (at a minimum, Caller ID/Call Waiting-related CPE) and voice mail and related voice messaging storage and retrieval services.<sup>9</sup>

Throughout its CPNI Order, the Commission endeavored to construe Section 222 in a manner “fully consistent with customer expectation” to further the “statutory principles of customer control and convenience embodied in Section 222.”<sup>10</sup> It reinforced this commitment by acknowledging that “customers expect that carriers with which they maintain an established

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<sup>6</sup>Rule 64.2005(b)(1) provides in part that a telecommunications carrier “may not use, disclose or permit access to CPNI derived from its provision of local service, interexchange service, or CMRS, without customer approval, for the provision of CPE and information services, including call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and Internet access services.”

<sup>7</sup>Petition for Temporary Forbearance or Stay of GTE Service Corporation, filed April 29, 1998 (“GTE’s Petition”), at 7-27; Request for Deferral and Clarification of Cellular Telecommunications Industry Association, filed April 24, 1998 (“CTIA’s Request”), at 8-39; Comments of SBC Communications Inc. In Support of GTE’s Petition and CTIA’s Request, Petition for Temporary Forbearance or Deferral of SBC Communications Inc., filed May 8, 1998 (“SBC’s Comments/Petition”), at 3-20.

<sup>8</sup>SBC’s Comments/Petition, at 3-9; Reply Comments of SBC Communication Inc. In Support of GTE’s Petition and CTIA’s Request, filed May 13, 1998 (“SBC’s Reply Comments”), at 2-3.

<sup>9</sup>SBC’s Comments/Petition, at 9-20; SBC’s Reply Comments, at 3-4.

<sup>10</sup>CPNI Order, ¶80.

relationship will use information derived through the course of that relationship to improve the customer's existing service."<sup>11</sup> However, by erecting a CPNI approval requirement with respect to CPE and enhanced/information services, the Commission will frustrate customers' one-stop shopping expectations and stymie carriers' abilities to offer the complete service solutions customers want -- although both have been generated by years of integrated offering of products and services on a one stop "integrated" basis. The time is now to conclude that "the public interest would be better served if carriers were able to use CPNI, within the framework of the total service approach, in order to market CPE"<sup>12</sup> and enhanced/information services.<sup>13</sup>

The Commission long ago authorized Bell Operating Companies ("BOCs") to provide -- on a fully integrated basis -- CPE (e.g., telephone sets, Caller ID display devices, and the like)<sup>14</sup> and enhanced services (e.g., voice mail and related storage/retrieval services).<sup>15</sup> The BOCs' wireless operations have held such authority even longer. In response to customers' one-stop shopping expectations, and given Commission authority to meet these expectations, SBC and

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<sup>11</sup>Id., ¶54.

<sup>12</sup>Id., ¶77.

<sup>13</sup>Id., n. 98.

<sup>14</sup>In the Matter of Furnishing of Customer Premises Equipment by Bell Operating Telephone Companies and the Independent Telephone Companies, Report and Order, 2 FCC Rcd 143 (1987) ("BOC CPE Relief Order"), reconsideration on other grounds, 3 FCC Rcd 22 (1987); aff'd, 883 F.2d 104 (D.C. Cir.1989).

<sup>15</sup>See, e.g., Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards, Report and Order, 6 FCC Rcd 7571 (1991) ("BOC Safeguards Order"); Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, Memorandum Opinion and Order, 10 FCC Rcd 1724 (1995) ("Interim Waiver Order").

other companies designed their marketing and sales organizations to provide customers with tariffed services, CPE and enhanced/information services on a fully integrated, one-stop basis.

As the Commission anticipated, indeed intended, customers have long since come to routinely expect that CPE and enhanced/information services provided by their telecommunications carrier will be made available to them as conveniently as their telecommunications service. The record is replete with acknowledgements by the Commission of the importance of customer convenience as a foundation and guiding principle of Section 222.<sup>16</sup> The imposition of a CPNI “approval” requirement in these circumstances frustrates and defeats the kind of convenience that customers want and that only one-stop shopping can provide -- unencumbered by a requirement that “inconveniences as well as burdens the carrier-customer dialogue.”<sup>17</sup>

To the extent that competitive considerations may be pertinent, there would be no anticompetitive effects were the Commission to include CPE and enhanced/information services within the scope of Section 222(c)(1)(B). This section applies to all carriers; thus, every carrier would be afforded the same latitude with respect to the offerings which are the subject of this PFR. Moreover, the Commission’s competitive concern that customers be permitted to retain control over CPNI in an environment where carriers could “gain a foothold in new markets,”<sup>18</sup> has no application to CPE or enhanced/information services. Neither market is “new” (as

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<sup>16</sup>CPNI Order, ¶¶35, 52, 54, 56, 57, 77, 80, 92, 99, 103, 109, 112, 116, 160, 163, 188, 189, 195, 197.

<sup>17</sup>Id. ¶195.

<sup>18</sup>Id., ¶77.

distinguished from, for example, long distance service sought to be offered by local exchange carriers, or local exchange service sought to be offered by interexchange carriers), and both are robustly competitive in any event. Finally, SBC does not manufacture CPE, and serves only as a distribution channel for unaffiliated third parties. Its offering of CPE provided by others, free of CPNI restrictions, thus will continue to allow competition in the CPE market to flourish.

From a legal perspective, CPE is no less “necessary to” or “used in” a carrier’s provision of wireline telecommunications service than inside wiring, which the Commission included within the scope of Section 222(c)(1)(B).<sup>19</sup> To the same degree that “inside wiring has little purpose beyond physically connecting the telephone transmission path,”<sup>20</sup> telephone sets, Caller ID display devices and other types of CPE likewise have little (or no) purpose beyond physically connecting the customer to the same transmission path (or in the specific case of Caller ID display devices, to adjunct-to-basic telecommunications services). Indeed, without CPE, telecommunications services would be impossible to use or enjoy.

Moreover, because SBC does not propose here to include the direct provision of CPE within Section 222(c)(1)(B), it stands on no different footing than the Commission’s inside wiring analysis. Both are commodities, neither are manufactured by SBC, and the Commission’s interpretation of Section 222(c)(1)(B) would be confined to, but compatible with, a proper analysis of the term “services” in that statutory provision, i.e., offering, installing, maintaining, and repairing both inside wiring and CPE.

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<sup>19</sup>Id. at 79.

<sup>20</sup>Id.

With particular respect to voice mail and related voice messaging storage and retrieval services, there is no question that customers view such services as integral components of their total telecommunications service. The functions these services afford customers work in tandem with several “adjunct-to-basic” functionalities, such as Caller ID and Call Waiting, to afford the customer complete control over their telephone service.<sup>21</sup> Yet, the Commission articulated no reasonable basis on which to distinguish, for Section 222 purposes, voice-mail-related services (which it declined to include within the total service relationship) from adjunct-to-basic services (which it did include within the total service relationship). The Commission thus invites additional customer confusion and frustration among consumers of enhanced/information services who expect the same convenient, one-stop shopping as consumers of CPE.

SBC urges that construction of the term “necessary” in Section 222(c)(1)(B) need and should not be restrictive, whether with respect to CPE or enhanced/information services. As a legal matter, to the extent that the Commission has in other contexts concluded that “the term ‘necessary’ does not mean ‘indispensable’ but rather ‘used’ or ‘useful,’”<sup>22</sup> Section 222(c)(1)(B)’s phrase “necessary to, or used in” deserves no less liberal an interpretation where, as here, customers actually use and find useful CPE and enhanced/information services in connection with carrier provision of telecommunications services to them.<sup>23</sup>

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<sup>21</sup>SBC’s Comments/Petition, at 9-13.

<sup>22</sup>Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) (“Local Competition Order”) at ¶579.

<sup>23</sup>SBC’s Comments/Petition, 9-19; SBC’s Reply Comments, 2-4.

In sum, the public interest would be far better served if the Commission were to give complete meaning and effect to customers' expectations of convenient, one-stop shopping and their view of their customer-carrier total service relationship. Further, appropriate statutory construction provides an appropriate legal basis on which to do so. SBC urges the Commission to reconsider its CPNI Order and Rule 64.2005(b)(1) and conclude that the offering, installation, maintenance and repair of CPE and the provision of enhanced/information services are services which are necessary to or used in the provision of telecommunications service, for purposes of Section 222(c)(1)(B).

**II. A TELECOMMUNICATIONS CARRIER SHOULD BE PERMITTED TO USE CPNI DERIVED FROM THE PROVISION OF ITS SERVICE RENDERED TO A CUSTOMER IN ORDER TO REGAIN THE BUSINESS OF THAT CUSTOMER.**

In its CPNI Order, the Commission concluded that a local exchange carrier is precluded from using or accessing CPNI derived from the provision of local exchange service in order to regain the business of a customer that has chosen another provider.<sup>24</sup> Rule 64.2005(b)(3) states that “[a] telecommunications carrier may not use, disclose or permit access to a former customer’s CPNI to regain the business of the customer who has switched to another service provider.” This conclusion and rule should be modified so that any telecommunications carrier may use the CPNI of a customer in order to engage in a “winback” discussion with that customer.

Without foundation in the record, the CPNI Order concluded that customer approval for the use of CPNI in a “winback” situation may not be appropriately inferred because such use is outside of the customer’s existing service relationship. As SBC and others have demonstrated,

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<sup>24</sup>CPNI Order, ¶85.



however, customers' expectations are to the contrary. In particular, both consumers and providers of goods and services understand that no business should be precluded from simply contacting its former customer in order to compete on the merits with another provider of the same good or service.<sup>25</sup> Moreover, customers routinely expect that companies with which they have done business will re-contact them to attempt to win their business back. CPNI use would allow discussions with customers that would enable them to make more educated choices in comparing like services. Such efforts are clearly pro-competitive -- they provide additional choices to consumers and allow providers of goods and services to compete on the merits.

The Commission sought to justify its conclusion and rule on the theory that use of CPNI for winback purposes is not "carried out 'in [the] provision' of service, but rather, for the purpose of retaining a customer that has already undertaken steps to change its service provider." This justification fails to square with several other portions of the order in which the Commission expressly treated the term "provision" as tantamount to "marketing:" "[W]e believe that the best interpretation of Section 222(c)(1) is the total service approach, which affords carriers the right to use or disclose CPNI for, among other things, marketing related offerings within customers' existing service for their benefit and convenience."<sup>26</sup> For these reasons, the Commission should conclude that, contrary to the Order and rule, the use of CPNI by a carrier in order to engage in winback efforts fits comfortably within a customer's expectation of the purpose to which his or

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<sup>25</sup>SBC's Comments/Petition, at 21-23.

<sup>26</sup>CPNI Order, ¶35. (emphasis added). See also, ¶25. ("Under the total service approach, the customer's implied approval is limited to the parameters of the customer's existing service and is neither extended to permit CPNI use in marketing all of a carrier's telecommunications services . . . , nor narrowed to permit use only in providing a discrete service feature." (emphasis added)).

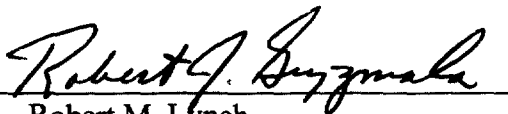
her CPNI may be put, is permitted by Section 222(c)(1) of the Act, and is also pro-competitive and otherwise in the public interest.<sup>27</sup>

### III. CONCLUSION

For the foregoing reasons, and those pointed out in SBC'S Comments/Petition, SBC urges the Commission to promptly reconsider its CPNI Order and rules, and clarify them as indicated above, in order to best serve customers' one-stop shopping and other commercial expectations in a manner consistent with the provisions of Section 222(c)(1) of the Act.

Respectfully submitted,

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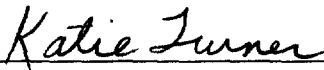
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<sup>27</sup>SBC also requests that the Commission clarify that the CPNI Order and Rule 64.2005(b)(3) do not bar the use of CPNI in order to engage in "retention" efforts. In support thereof, SBC refers the Commission to pages 24-25 of SBC's Comments/Petition.

## **CERTIFICATE OF SERVICE**

I, Katie Turner, hereby certify that the foregoing, "PETITION FOR  
RECONSIDERATION OF SBC COMMUNICATIONS INC.," in CC Docket No.  
96-115 have been filed this 26<sup>TH</sup> day of May, 1998 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie Turner", is written over a horizontal line.

Katie Turner

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